

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

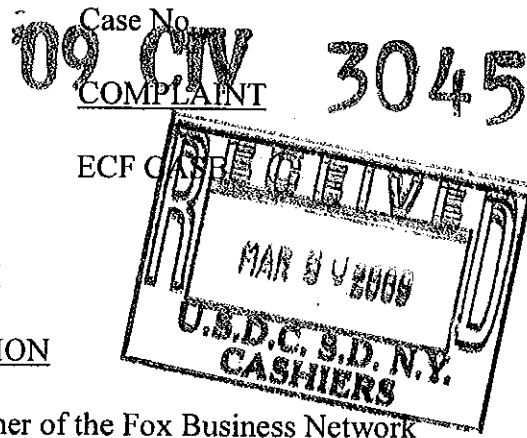
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FOX NEWS NETWORK, LLC,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF
THE TREASURY,

Defendant.
-----X



INTRODUCTION

1. Plaintiff Fox News Network, LLC, owner of the Fox Business Network (hereinafter, collectively referred to as "Fox Business") brings this action against defendant United States Department of the Treasury (the "Treasury"), an agency of the federal government, to vindicate its right under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to obtain, *on an expedited basis*, government records regarding the Treasury's administration of the Troubled Assets Relief Program ("TARP"), the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 §115 (Oct. 3, 2008). Fox Business requested records relating to (a) the Treasury's restructuring of its plan to "bail out" American International Group ("AIG"); (b) the oversight measures the Treasury has employed to regulate AIG's use of bailout funds; (c) collateral calls issued to AIG by its counterparties to AIG's Collateralized Debt Obligations ("CDOs"); (d) AIG's use of bailout money to pay off its Credit Default Swap Contracts; and (e) the Treasury's retention of Davis Polk & Wardwell and Morgan Stanley to provide professional services in connection with the Treasury's implementation of TARP.
2. Fox Business requested these records because, as a member of the news media, it has a responsibility to inform the public about the management of programs like TARP, which

have a vital effect on the American financial system and, by extension, on the global economy.

Fox Business also sought expedited processing pursuant to 5 U.S.C. §552(a)(6)(E) because of the obvious importance of the *timely* dissemination of information in this rapidly changing economic and political landscape. Having been unable to obtain even a timely response to its application for expedited processing as required by 5 U.S.C. §552(a)(6)(E)(ii)-(iii) and 31 C.F.R. §1.5(e)(4), Fox Business is now seeking declaratory and injunctive relief from this Court.

3. The public's confidence in the financial industry and in the government's ability to protect the individual investor and the financial markets from corporate greed and mismanagement is at a critical low. Unprecedented amounts of government capital have been pumped into the financial sector of the economy--\$170 billion to AIG alone—with virtually no government oversight.

4. The need to provide the public with the information contained in the requested records is especially urgent in light of the recent confusion about which government officials were responsible for legislation that permitted AIG to use public funds to pay large bonuses to the very employees whose actions brought about the company's near collapse. Even more critically, disclosure of information about the Treasury's management of the AIG bailout is needed so that the public can evaluate the Treasury Department's recently announced plan for federal regulation of financial institutions like AIG.

5. The public's need for information and accountability is pressing. There has been widespread recognition of the critical role that public confidence plays in the economy. It is self-evident that public confidence depends, in large measure, upon the availability of information about the government's intervention. Likewise, an informed public is essential to the national

debate that is currently being conducted in Congress and the media. Accordingly, there is a compelling and immediate need for the documents Fox Business has sought.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(4)(B).

7. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Inasmuch as the Treasury has not met its legal duty to respond to Fox Business's request for expedited processing within the required time, Fox Business is relieved of any obligation to exhaust administrative remedies and is now entitled to appeal directly to the Court to enforce the dictates of FOIA pursuant to 5 U.S.C. § 552(a)(6)(C).

THE PARTIES

9. Fox News Network, LLC, which owns the Fox Business Network, is a Delaware limited liability company with its principal place of business located at 1211 Avenue of the Americas, New York, New York. The Fox Business Network is a 24/7 cable news network that disseminates business news and information.

10. Defendant Treasury is an agency of the United States and has possession and control of the records that Fox Business is seeking.

BACKGROUND

11. The Treasury is charged with the primary responsibility of implementing and overseeing TARP. Under TARP, Congress provided the Treasury with broad authority to stabilize the financial system by permitting the Treasury to take the steps it deems necessary, including buying up to \$700 billion in "troubled assets" from floundering financial institutions and insuring "troubled" home mortgages.

12. Since the passage of TARP, there has been mounting concern by both the public and national leaders about the apparent lack of transparency and accountability in the Treasury's use of such large quantities of public funds.

13. Among the concerns expressed by the public and its elected representatives is that the Treasury has not adequately monitored and reported to the public the ultimate use of funds expended under TARP.

14. AIG's recent payout of more than \$165 million in employee bonuses demonstrates that the American public's concerns about oversight and accountability are not unfounded. See http://www.oag.state.ny.us/media_center/2009/mar/mar23a_09.html. Accordingly, it is critical that news outlets like Fox Business be able to obtain critical information so that they can inform the public about how its money is being used and what measures are being taken to protect the public's interests. Fox Business's request for information under FOIA is tailored to meet that goal.

FOX BUSINESS'S FOIA REQUEST

15. On March 16, 2008, Fox Business faxed and sent overnight by Fed Ex a FOIA Request, which was entitled "Freedom of Information Act Request and Request for Expedited Processing" (the "FOIA Request"). The FOIA Request was properly addressed to Departmental Offices, FOIA/PA Request, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220. The FOIA request was faxed to (202) 622-3895, the number listed for FOIA requests on the Treasury's website. The fax confirmation receipt confirms that the Treasury received the faxed FOIA Request on March 16, 2009. The FedEx confirmation receipt confirms that the Treasury received the copy of the FOIA Request sent by overnight mail on March 17, 2009.

16. The FOIA Request seeks the following records generated after November 25, 2008:

- All records relating to the announced restructuring of the United States Government's assistance to American International Group ("AIG") pursuant to TARP and the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008), as discussed in the Department's press release dated March 2, 2009 (the "March 2 Press Release");
- All records relating to AIG's use and/or expenditure of public funds, monies and/or lines of credit that have been given or paid to or invested in AIG;
- All records relating to terms, conditions and/or restrictions on executive compensation, benefits and perquisites for AIG personnel, board members and management that the Department has imposed upon or negotiated with AIG;
- All records relating to the Department's procedures for oversight of AIG's financial activities, investments, purchases, business activities, management and decision-making;
- All records relating to the Department's oversight of AIG's financial activities, investments, purchases management and decision-making;
- All records relating to any accountings that have been made by AIG in connection with the implementation of TARP and/or any other federal programs involving the use of public funds to lend money or invest in AIG and/or AIG's assets;
- All records relating to terms, conditions, restrictions and other obligations that the Department has imposed upon or negotiated with AIG in connection with restructuring of its assistance to AIG under the arrangement described in the March 2 Press Release;

17. The FOIA Request also seeks the following records generated after July 1, 2008:

- All records relating to collateral calls issued to AIG by its swap counterparties and actual payments of collateral by AIG in response to those collateral calls;

- All records relating to transactions in which TARP money has been used to fund the purchase from AIG's swap counterparties of multi-sector collateralized debt obligations on which AIG had written credit default swap (CDS) contracts. This request includes, but is not limited to, any breakdown, schedule or other document identifying the counterparties who had entered into credit default swaps with AIG and the notional amount of each such trade, as well as the identity of AIG counterparties that owned the underlying reference obligations and the amount of such holdings;
- All records relating to the Department's retention of the firm of Davis Polk & Wardwell ("DPW"), including without limitation, the retention/engagement letter and any records evidencing discussion of and/or waivers of conflicts of interest on the part of DPW in connection with its representation of the Department in its transactions with AIG under the TARP Program and its concurrent representation of, without limitation, Citigroup, Inc.; and
- All records relating to the Department's retention of Morgan Stanley to advise the Department in connection with DPW's transactions with AIG under the TARP Program.

18. With respect to the request for expedited processing pursuant to 5 U.S.C. §552(a)(6)(E)(v)(ii), Fox Business is a member of the news media as defined in 31 C.F.R. § 1.5(b)(2)(iv) and is primarily engaged in the dissemination of information to the public as referred to in 31 C.F.R. § 1.5(e)(2)(ii).

19. As to the urgency of its request, Fox Business stated:

Fox Business's requests concern matters of exigent and current interest to the American public. Specifically, the American public has a compelling need to be immediately and fully informed about the use of public money to implement the emergency rescue plan approved by the United States Congress. The public also has a compelling need to be fully informed about the oversight that attends this use of public money by the public officials and private entities that have been charged with that responsibility. Public confidence in the institutions of government and its private surrogates is important to the stability of and recovery of the American and global financial systems as those systems attempt to weather the current financial crisis, the widespread financial

turmoil, the increased joblessness and housing foreclosures, and the significant losses in personal and retirement savings. Access to the requested information through the news media is critical to such public confidence.

Any delay in the release of the requested information would significantly compromise the American public's ability to assess the [Treasury's] use of the TARP bailout funds, particularly in light of the [Treasury's] rapidly changing policies and practices and in light of the increasingly changing demands on the those funds. In addition, any delay would disrupt the public's ability to make its views known to public officials just as those officials are daily being asked to make critical and sweeping decisions based on limited information. Significantly, any delay will undermine public confidence in the integrity and reliability of the [Treasury], further eroding the American financial system.

20. In addition to the foregoing, Fox Business "agree[d] to pay any fees that may be incurred in connection with the processing of the requested records, up to an upper limit of \$1000" and indicated that a response was expected "within ten (10) calendar days."

21. The Treasury received the FOIA Request by fax on March 16, 2009, and by FedEx on March 17, 2009. Consequently, pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 31 C.F.R. § 1.5(e)(4), the Treasury was required to provide a response to Fox Business's request for expedited processing on or before March 26, 2009.

22. The Treasury failed to timely respond and still has not responded to Fox Business's FOIA Request or its request for expedited processing.

FIRST CAUSE OF ACTION

(For a Declaration that Fox Business is Entitled to Expedited Processing of Its FOIA Request)

23. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-22 as if fully set forth herein.

24. There exists a compelling need for and an urgency to inform the public about the information sought in Fox Business's FOIA request as is required by 5 U.S.C. §552(a)(6)(E).

25. Fox Business has complied in all respects with the substantive and procedural rules governing request for records under FOIA as required by 5 U.S.C. §552(a)(3).

26. As a result of the Treasury's failure to meet its statutory deadlines under 5 U.S.C. § 552(a)(6)(E)(ii)(I), Fox Business is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

27. An actual and justiciable controversy exists as to whether the Treasury has violated FOIA by failing to respond to Fox Business's requests for expedited processing within the required time and by failing to grant Fox Business expedited processing for its FOIA Request.

28. As a result of the foregoing, Fox Business is entitled to a declaration that its FOIA Request must be afforded expedited processing.

SECOND CAUSE OF ACTION

(For an Injunction Compelling Expedited Processing)

29. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-28 as if fully set forth herein.

30. As a result of the foregoing, Fox Business is entitled to an injunction compelling the Treasury to afford its FOIA Request expedited processing.

THIRD CAUSE OF ACTION

(For a Declaration that Fox Business is Entitled to the Records Sought in Its FOIA Request)

31. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-30 as if fully set forth herein.

32. Upon information and belief, the records sought in Fox Business's FOIA Request are in the custody and control of the Treasury.

33. Upon information and belief, the records sought in Fox Business's FOIA Request are "reasonably described" as required by 5 U.S.C. §552(a)(3).

34. Upon information and belief, the records sought in Fox Business's FOIA Request are not subject to any of the exemptions from public disclosure that are set forth in 5 U.S.C. § 552(b).

35. An actual and justiciable controversy exists in that the Treasury has failed to disclose the records sought in Fox Business's FOIA Request.

36. As a result of the foregoing, Fox Business is entitled to a declaration that the Treasury is obligated to provide it with copies of the records sought in Fox Business's FOIA Request.

FOURTH CAUSE OF ACTION

(For an Injunction Requiring the Treasury to Comply with Fox Business's FOIA Request)

37. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-36 as if fully set forth herein.

38. As a result of the foregoing, Fox Business is entitled to an injunction compelling the Treasury to provide Fox Business with copies of the records sought in the FOIA Request on an expedited basis.

REQUESTED RELIEF

WHEREFORE, Fox Business requests that the Court:

(A) Declare that Fox Business's FOIA Request is entitled to receive expedited processing;

(B) Issue an injunction compelling the Treasury to give Fox Business's FOIA Request expedited processing;

(C) Declare that Fox Business is entitled to copies of the records sought in its FOIA Request;

(D) Issue an injunction compelling the Treasury to collect and give to Fox Business copies of the records requested in the FOIA Request;

(E) Award Fox Business reasonable attorney fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E)(i)-(ii); and

(F) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 30, 2009

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